
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ROLAND MCNEIL,

Plaintiff,

v.

KENNECOTT UTAH COPPER CORP.,

Defendant.

**ORDER AFFIRMING & ADOPTING
REPORT & RECOMMENDATION**

Case No. 2:08CV41DAK

This case was referred to Magistrate Judge Samuel Alba under 28 U.S.C. § 636(b)(1)(B). On July 20, 2009, Magistrate Judge Alba issued a Report and Recommendation recommending that Defendant's Motion for Summary Judgment be granted, Plaintiff's Motion for Leave to File a Late Response be denied, and Plaintiff's Motion to Strike be denied as moot. On July 30, 2009, Plaintiff filed an Objection to Magistrate's Recommendation and Order. Defendant filed a response to Plaintiff's objection on August 11, 2009, and Plaintiff filed a reply on August 17, 2009.

Plaintiff challenges Magistrate Judge Alba's conclusions with respect to the racial discrimination, retaliation, and hostile environment claims. Plaintiff claims that there are material facts in dispute that require this case to go to trial. Plaintiff also refers to alleged errors in Magistrate Judge Alba's ruling on discovery motions. To the extent that Plaintiff is objecting

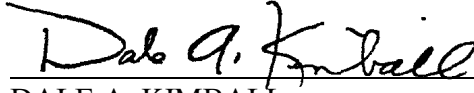
to the ruling on discovery motions, the objection is untimely.

A Magistrate Judge's Report and Recommendation is subject to *de novo* review by this court. *See* 28 U.S.C. § 636(b)(1)(B); *see also* Fed. R. Civ. P. 72(b). The court has reviewed the record *de novo* with respect to these motions. Despite Plaintiff's failure to comply with procedural rules, the court has also considered all of the evidence presented by Plaintiff. After conducting a *de novo* review of the record with respect to these motions and considering Plaintiff's objections to the Report and Recommendation, the court finds no basis for reversing or modifying the Report and Recommendation. Defendant is entitled to summary judgment on each of Plaintiff's claims for the reasons set forth in Magistrate Judge Alba's Report and Recommendation. None of the evidence submitted by Plaintiff changes the applicable legal analysis. Even if Defendant was mistaken in its business determination to terminate Plaintiff, there is no evidence that Defendant's determination was retaliatory or a pretext for discrimination. In addition, Plaintiff's hostile work environment claim is not supported by sufficiently severe conduct directed at Plaintiff. Therefore, Magistrate Judge Alba's July 20, 2009 Report and Recommendation is hereby affirmed and adopted in its entirety as the Order of this court.

Accordingly, Defendant's Motion for Summary Judgment is GRANTED, Plaintiff's Motion for Leave to File a Late Response is DENIED, and Plaintiff's Motion to Strike is DENIED as moot.

DATED this 18th day of August, 2009.

BY THE COURT:



DALE A. KIMBALL
United States District Judge